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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 09/872,532 | 06/01/2001 | Daniel J. McGurran | 56763US002 | 3298 |
| 32692 7590 11/28/2007 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427. | | | EXAMINER AHMED, SHEEBA | |
| | | | ART UNIT 1794 | PAPER NUMBER |
| | | | NOTIFICATION DATE 11/28/2007 | DELIVERY MODE ELECTRONIC |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/872,532
Filing Date: June 01, 2001
Appellants: MCGURRAN ET AL.

MAILED
NOV 28 2007
GROUP 1700

Timothy A. Czaja
For Appellants

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 27, 2007 appealing from the Office action mailed February 28, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1, 2, 10, 11, 13-19, 21-27 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, has been withdrawn by the Examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

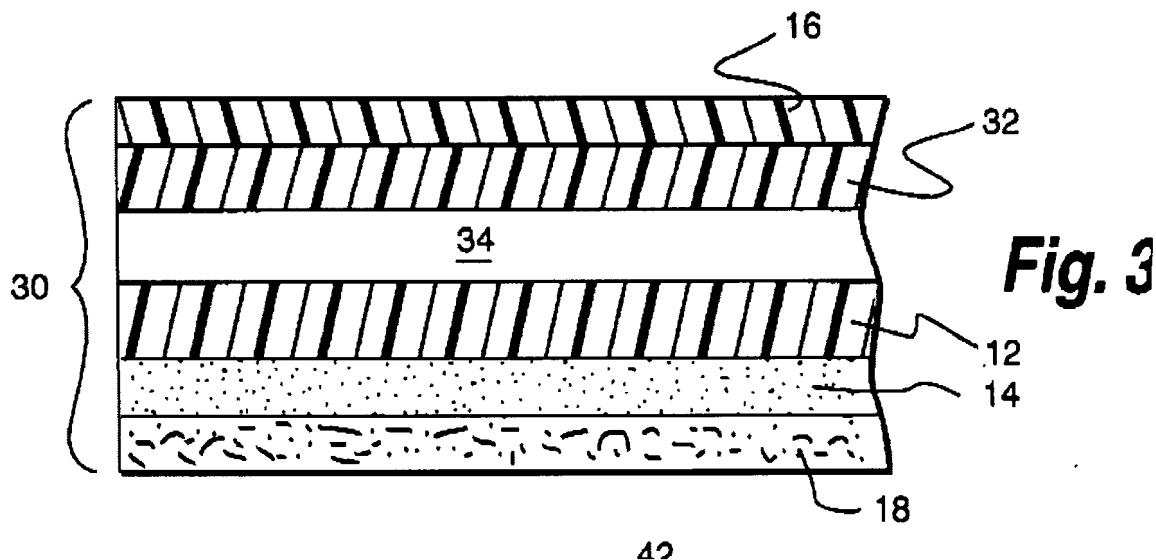
| | | |
|-----------------|---------------|--------|
| US 2006/0003158 | Enniss et al. | 1-2006 |
| US 6,440,551 | Enniss et al. | 8-2002 |
| US 4,634,637 | Oliver et al. | 1-1987 |
| US 3,298,959 | Marks et al. | 1-1967 |

(9) Grounds of Rejection

The following ground of rejection is applicable to the appealed claims:

Claims 1, 2, 10, 11, 13-19, 21-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Enniss et al. US 2006/0003158 or 6,440,551 (having an effective filing date of June 14, 1999) alone or in view of Oliver et al (4,634,637) or Marks et al. (3,298,959).

Enniss et al. teach laminate film structures, which comprise layers containing pigments and layers containing dyes so that the over all color of the film is improved [006].



These structures contain a film layer, which is colored with blue and red dyes (12) and a color matching layer (14) which contains a pigment [0029], wherein the a gray composite results. The pigment may be in the adhesive layer (14) or in an additional film layer (e.g. 32) [0034]. The films have will have haze values of less than 25%, preferably not greater than 5% (printing error in the pre-grant publication [0035], see 6,440,551 for evidence of content; column 6, line 8). The film layers are made of thermoplastic resins such as polyester [0021]. The pigments have particle sizes of less than about 10 microns, preferably less than about 0.5 microns [0026] and can be virtually any pigment that satisfies the criteria of the invention, wherein the size of the

pigments is directly related to the amount of haze. Small pigment particles produce less haze [0027]. The film have a* and b* values within the values of -5 to 5 as claimed (see Example 1). Given the teachings of Enniss et al., it would have been obvious to one having ordinary skill in the art to arrive at a film having the claimed properties. They clearly teach how to use dyes and pigments in the same films, how to produce films having low haze, etc... The amount of pigment and dye would be directly related to the blocking desired. Regarding the degree of transmission within a waveband of interest in the visible spectrum of 5% to 90%, based on the materials used and the construction of the film, taking into consideration the use of the film, the film would have this property.

Regarding the use of carbon black, this is an old pigment, which gives a gray color. It would have been obvious to use carbon black in the structure described by Enniss et al, as it is a stable black pigment. The examiner relies upon Marks et al. (figure 2) and Oliver et al. (column 3, lines 55+) to show that carbon black is conventionally used in optical films as a pigment resulting in a gray film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used carbon black as a pigment to produce gray structure.

Regarding claim 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the dye and pigments in the same layer as opposed to two separate layers as this would reduce the number of separate layers need and make a more economical film.

Regarding claims 22 and 23, given that these claims are generic to any dye that can be polymerized with the polymer, the examiner takes the position that polymerizing

dyes in the polymer structure is of ordinary skill in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used dyes having polymerizable groups, as they would become permanently part of the structure.

Regarding claims 26 and 27, polyester films are conventionally cast and oriented to make them thinner and stronger. It would have been obvious to orient the polyester films taught by Enniss et al. to produce thinner, stronger films.

(10) Response to Argument

Appellants traverse the rejection of claims 1, 2, 10, 11, 13-19, 21-27 under 35 U.S.C. 103(a) as being unpatentable over Enniss et al. US 2006/0003158 or 6,440,551 (having an effective filing date of June 14, 1999) alone or in view of Oliver et al (4,634,637) or Marks et al. (3,298,959) and submit that the claims recite an optical body comprising a particulate pigment dispersed within a thermoplastic polymer material wherein at least one dye, which adjusts the transmuted color, is added to the pigmented polymer material such that the pigmented polymer material appears to be substantially neutral gray. Appellants further argue that, in contrast to the appealed invention, Enniss et al. start with a dyed film layer and add a pigmented adhesive in creating a visually additive effect. The Appellants state, in other words, that claims 1, 13, and 14 adds a dye to a pigmented polymer and that Enniss et al. add a pigment to a dyed film.

In response the Examiner would like to point out that independent claims 1 and 14 simply recite a pigmented optical body comprising at least one layer of a

thermoplastic polymer material, wherein dispersed within the polymer material is a particulate pigment, wherein the optical body exhibits a transmission of light within a wavelength band of 400 nm - 700 nm of from 5% to 90%, wherein the dispersed particulate pigment imparts a substantial transmitted color to the optical body, and the optical body further comprises at least one dye added to adjust the transmitted color of the optical body to a substantially neutral gray **and not** a process of making a pigmented optical body comprising a pigmented thermoplastic polymer material to which a dye is added to adjust the transmitted color of the optical body to a substantially neutral gray. First, independent claims 1 and 14 are product claims and the patentability of a product does not depend on its method of production. If the product is obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. Second, there is nothing on the record to show that the addition of the dye to an already pigmented thermoplastic polymer material imparts distinctive structural characteristics to the final product. Hence, Enniss meets the limitations of the appealed independent claims 1 and 14.

With regards to claim 16, the Appellants argue that nothing in Enniss et al. teaches or suggests the claimed a^* value and b^* value. However, as previously pointed out, Example 1 shows a film having a^* and b^* values within the values of -5 to 5.

Lastly, with regards to claims 24, 26, and 27, Appellants submit that Enniss et al. teach away from the use of carbon black given that Enniss et al. disclose altering a gray-toned, dyed film using a separate pigment selected to satisfy the color deficiency in the dyed film layer. However, the Examiner disagrees. The use a pigment other than

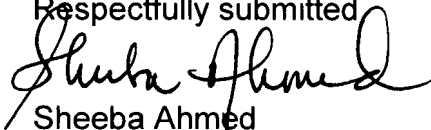
carbon black by Enniss et al. simply falls far short of the kind of teaching that would discourage one of skill in the art from using carbon black. Carbon black, is an old pigment, which gives a gray color and it would have been obvious to use carbon black in the structure described by Enniss et al, as it is a stable black pigment. The Examiner has relied upon Marks et al. (figure 2) and Oliver et al. (column 3, lines 55+) to show that carbon black is conventionally used in optical films as a pigment resulting in a gray film.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted



Sheeba Ahmed
November 19, 2007

Conferees:

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/Carol Chaney/
Carol Chaney
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